

Foreign Ownership, Control or Influence (FOCI)

Wiley has significant experience representing clients in the full range of issues before the Defense Counterintelligence and Security Agency (DCSA), an agency within the U.S. Department of Defense (DOD). DCSA grants security clearances that permit companies and their personnel to perform classified work. Our clients span multiple industries, including aerospace, defense, intelligence, critical technology, and telecommunications.

DCSA clears entities as a whole by issuing a Facility Security Clearance (FCL), and clears individual employees engaged in classified work by granting Personnel Security Clearances (PCLs). U.S. government contracts that require access to classified information will not be awarded to companies operating under foreign ownership, control or influence (FOCI) unless adequate safeguards are in place to protect national security interests.

Wiley has represented a wide range of companies with transactions subject to DCSA jurisdiction, from the due diligence phase to implementation to FOCI mitigation measures. We have also worked with DCSA on behalf of clients to implement DCSA's new Risk-based Security Oversight (RISO) methodology that couples National Industrial Security Program Operations Manual (NISPOM) compliance with an oversight process that focuses on the particular assets at a cleared facility, the threats and vulnerabilities associated with those assets, and appropriate countermeasures. Members of Wiley's DCSA practice consistently work with key U.S. government decision-makers to help craft successful FOCI mitigation instruments, which may include board resolutions, security control agreements, special security agreements, or more complex proxy agreements or voting trusts.

Wiley has also authored the DCSA and FOCI Handbook, which reviews FOCI mitigation instruments, RISO, recent developments, and compliance examples.

Representative Experience

Wiley's FOCI experience includes, among other matters:

- Assist multiple clients in obtaining FCLs.
- Assisted a chemical detection equipment manufacturer in developing appropriate sales and marketing material which highlighted capabilities in a manner consistent with security restrictions.

- Helped negotiate multiple FOCI mitigation agreements in order to permit government contractors to continue to perform classified contracts.
- Developed necessary access control plans to allow a foreign-owned company to serve as a DOD missile program subcontractor.
- Negotiated the internal reorganization of a major defense contractor to ensure the provision of shared services across mitigated and non-mitigated entities, including a proxy entity.
- Counseled a major foreign government-controlled satellite company in its acquisition of substantial satellite communications assets serving the United States and the international community.
- Advised a ruggedized military vehicle manufacturer regarding the development of the necessary policies and procedures to obtain a facility clearance.
- Advised government contractor in reorganization consistent with FOCI mitigation obligations.
- Counseled a large U.S. consulting firm in navigating the FOCI mitigation process.
- Provided FOCI compliance training to cleared organizations and assisted companies operating under FCLs in developing appropriate internal FOCI compliance measures.

Contact Us

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